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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,712

12/31/2003

James T. Nielsen

149

1367

33109 7590 09/26/2006

CARDICA, INC.
900 SAGINAW DRIVE
REDWOOD CITY, CA 94063

EXAMINER

ANDERSEN, MICHAEL T

ART UNIT

PAPER NUMBER

3734

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/750,712

Applicant(s)

NIELSEN ET AL.

Examiner

M. Thomas Andersen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 14-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/31/03, 2/06/04, 6/17/04, 4/29/05, 1/27/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

During a telephone conversation with Brian Schar on 7/14/2006 a provisional election was made without traverse to prosecute the invention of performing the method for manipulating a graft vessel relative to a target vessel, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

The information disclosure statements (IDS) received on 1/27/2006, 4/29/2005, 6/17/2004, 2/06/2004 and 12/31/2003 are acknowledged. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Please submit the references that are crossed out on the IDS for them to be considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims **1-8** and **10-13** rejected under 35 U.S.C. 102(e) as being anticipated by **Spence et al.**, U.S. Patent No. **6,254,617**. Spence discloses methods for performing an anastomosis.

Spence discloses in figure 30 making a substantially longitudinal incision in a wall of the graft vessel at an end thereof to form a flap therein; providing a staple holder (see col. 20, lines 50-60) having spaced-apart arms (302' and 304') and a graft affixer (101) projecting therefrom; placing a portion of the graft vessel between said spaced-apart arms; and engaging the graft vessel with said graft affixer (figure 33).

Spence further discloses pushing the graft vessel down onto the graft affixer (see figures 32-33) and the engaging is performed at the heel of the graft vessel (see figures 30-34).

The step of engaging in Spence includes everting the end of the graft vessel onto the graft affixer (see figure 34, where the outward flex of the graft vessel is considered eversion).

The step of engaging includes penetrating a wall of the graft vessel at least partially with the graft affixer (see figure 34).

The step of engaging also includes hooking a wall of the graft vessel with the graft affixer (see figure 34); and engaging can also be said to include clipping a portion of the graft vessel with the graft affixer (figure 34).

The push rod 366 in figure 35 adjusts the angle of the tilt table 380 and can be considered a measurement feature because the location of the push rod determines the angle of the tilt table 380. Spence's method further comprises angling the graft vessel relative to the staple holder, as shown in figure 35.

The staple holder includes at least one spike 66 extending therefrom, and the flap is engaged with at least one spike (see figure 34).

Spence's method further comprises affixing the end of the graft vessel to the target vessel (see figure 37) and affixing is performed by urging a plurality of connectors through the flap of the graft vessel and into a wall of the target vessel (see figure 37).

The connectors can be considered staples (see figure 37 and col. 20, lines 50-60).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spence. Spence does not expressly disclose unconnected indicia on the measurement feature (push rod 366). However, such an indicia would be obvious to better know the angle of

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the graft vessel affixed to the tilt table. As discussed above in regard to claim 8, Spence discloses angling the graft vessel relative to the staple holder in figure 35. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply indicia to the push rod 366 to better determine the precise angle of the graft vessel being applied.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Thomas Andersen whose telephone number is (571) 272-8024. The examiner can normally be reached on M-F 8AM-4:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Thomas Andersen

August 23, 2006



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER